

REMARKS

Reconsideration and further examination of the above-identified application are respectfully requested in view of the accompanying amendments, and the discussion that follows. Claims 1-30 are pending in this application. Claims 1-12 have been rejected under 35 U.S.C. §101 as directed purely to mental steps. Claims 1-2, 4-5, 7-9, 13, 14, 16, 17, 20, 21, 23, 25, 26, and 28 have been rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,724,887 to Eilbacker et al. ("Eilbacker") in view of Jackson ("Handling E-Mail in a Customer-Centric Organization"). Claims 3, 10, 15, 19, 22, 24, 27, and 29 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker and Jackson further in view of Ulrich (U.S. Pat. No. 6,895,438) and claim 6 has similarly been rejected as being unpatentable over Eilbacker and Jackson further in view of Armstrong (U.S. Pat. No. 6,355,633). Claim 11 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker and Jackson in view of U.S. Pat. No. 5,621,789 to McCalmont et al. ("McCalmont") and claim 12 has been similarly rejected over Eilbacker, Jackson, and McCalmont further in view of Ulrich. Claims 18 and 30 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Eilbacker and Jackson further in view of Ichbiah (U.S. Pat. No. 5,623,406). Claims 1, 13, and 25 have been amended. After a careful review of the claims and references, it is believed that the claims are now in allowable form and a Notice of Allowance is respectfully requested.

Claims 1-12 have been rejected under 35 U.S.C. §101 as being a method of purely mental steps. Claim 1 has been amended to tie the claim to a specific apparatus (contact center apparatus) including at least one processor serving a plurality of clients and agents and is now tied to a specific apparatus. As a result, the method cannot be performed as mental steps because as claimed, at least one of the steps are performed by an apparatus including at least one processor. Such an apparatus including a processor is unequivocally hardware (i.e., a machine) but need not be "limited to" only hardware. In addition, the method creates articles (a file and a report) which in itself is a transformation of raw information into a useful file/report form, and also transforms the file by adding the measured indicia. Thus, claim 1 and dependent claims 2-12 are now both tied to a specific apparatus, and also transforms an underlying subject matter. Therefore, the subject matter of claims 1-12 falls within 35 U.S.C. §101.

All independent claims 1, 13, and 25, as well as dependent claims 2, 4, 5, 7-9, 14, 16, 17, 20, 21, 23, 26, and 28 have been rejected as obvious over Eilbacher in view Jackson. Eilbacher is directed to a call center which records and analyzes parameters of telephone calls to determine the customer experience. Eilbacher, however, does not deal with the effective effort of data communications. As described in the instant patent application (at p. 10, lines 1-12 and 22-32), merely measuring time of use of the channel for telephone calls is known but asynchronous transactions are dramatically different because of the nature of the transaction. As described by applicant (p. 10, lines 12-21) asynchronous transactions are data transactions that are for the most part intermittent and in which the data is created first and then transmitted afterward. Thus, it is difficult to determine how long the transaction actually required because the transaction may include exchanges over hours or days while the actual transactions (which may be the result of much effort in, for example, drafting an e-mail) take only very short periods of time (e.g., milliseconds) with long delays in between. Eilbacher does not recognize or address this issue at all.

Independent claims 1, 13, and 25 recite measuring "...an effort value which reflects effective effort to respond to each transmission within each transaction (see e.g., claim 1, lines 6-8; p. 12, second paragraph). The Office Action concedes that Eilbacher does not teach an effort value which reflects effort associated with each transmission but argues that Jackson discloses an effort value which represents effective effort to respond as "e-mail response time" associated with each e-mail transmission within each transaction. Jackson, however, merely refers to "e-mail response time," ("By understanding the customer's ideal experience...E-mail response time becomes as important as telephone response time..." Jackson, p. 6, lines 19-34) which clearly refers to the total time to respond to an e-mail from the customer perspective (i.e., how long was the total time between the customer sending the e-mail and the customer receiving a response back) not the agent's effort to respond. Jackson's "response time" is not a measure of effort to respond since it would include, for example, such time periods as delays before opening the e-mail, delay in beginning to prepare a response, delay in transmitting the response after preparing the response, delays in transmission over the network, etc.. Therefore, this "response time" is unrelated to the claimed effort value and Jackson's mere mention of this customer centric "response time" does not teach or suggest applicant's claimed effort value. The claimed invention instead concerns a measure of the effort needed to respond to a message which

includes evaluating, and preparing a reply such as an e-mail (see e.g., specification, p. 12 and 13) not the time between transmission of the initiating e-mail by the customer and the receipt of a response from the agent. Further, Jackson also does not teach a value that represents effort to respond to each transmission within each transaction as claimed.

The Office Action asserts that Jackson's response time is equivalent to the effective effort value of the claims, and that effort value may be broadly interrupted to be any measure of effort. However, the specification is clear in explaining the effective effort value in pages 10-13. For example, page 12, lines 26-27, point out that "duration of the actual transmission is meaningless" and page 12, lines 1-2, point out that the appropriate indicia of activity is not based upon a duration of channel occupancy. However, claim 1, 13, and 25 have been amended to clarify the meaning of "effective effort" as independent of actual channel occupancy (see e.g., p. 12, lines 1-2 and 17-27; p. 10, lines 0-5). Thus claims 1, 13, and 25 are further distinguishable. The Office Action also asserts that even if Jackson's e-mail response time bid includes delays, it would still teach the claimed subject matter because such delays would suggest lack of effort by the agent. However, inclusion of such lack of effort integrated with the effort measure would make the effort measure meaningless as described at page 12, lines 17-28. Including the delays as suggested by the Office Action would merely keep the measure from reflecting effective effort. Thus, Eilbacher and Jackson do not disclose the claimed effort value feature, and therefore independent claim 1, 13, and 25 are distinguishable over the combination as are claims 2-12, 14-24, and 26-30 which depend therefrom. In addition, none of the other references of record disclose this effort value feature. Thus, all rejected claims 1-30 are allowable over all of the cited references.

Claims 4 and 16 have been rejected as obvious over Eilbacher in view of Jackson. Claims 4 and 16 both recite counting of the "number of exchanges between the agent and the client." The Office Action asserts page 4 that Eilbacher teaches counting the number of exchanges at Col. 10, lines 13-18. However, Eilbacher merely refers to recording "interaction during the call" which refers to the fact that the single call is recorded along with transfers and holds. (Col. 10, lines 13-18). Thus, this is a single call, not a series of a synchronous exchanges and there is no description of counting any such synchronous exchanges (since it is one contiguous call). Thus, Eilbacher does not disclose the claimed "counting." This counting feature is also not disclosed by Jackson or any of the other cited references. Thus, claims 4 and

16 are further distinguishable over all the cited references and are therefore allowable over all the cited references.

As discussed above, claims 1-30 are directed to statutory subject matter and are not anticipated or rendered obvious by any combination of the cited references. Therefore, allowance of claims 1-30 is believed to be in order and such action is respectfully requested. Should the Examiner be of the opinion that a telephone conference would expedite prosecution of the subject application, he is respectfully requested to telephone applicant's undersigned attorney.

Respectfully submitted,

HUSCH BLACKWELL SANDERS  
WELSH & KATZ

By: James A. Scheer  
James A. Scheer  
Registration No. 29,434

Dated: June 30, 2009

HUSCH BLACKWELL SANDERS  
WELSH & KATZ  
120 South Riverside Plaza, 22nd Floor  
Chicago, Illinois 60606  
(312) 655-1500